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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,820	07/23/2003	Jonathan Maynes	CEN0017-01	7804

7590

02/28/2006

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/625,820	Applicant(s) MAYNES, JONATHAN	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-15-03; 1-2-04; 7-23-05</u> | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Umeda (5,833,858) and see Table 2 in column 11.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Losch (5,310,734) and see example 2.

Claim 5 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pardum (3,661,946) and see column 6, test 2.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kataoka (6,749,881) in view of Losch (5,310,734) or Umeda (5,833,858).

Kataoka discloses a packaged emulsified beverage containing lecithin (see table 5). The claims appear to differ from Kataoka in the use of the particular lecithin of claim 6. It would have been obvious to one of ordinary skill in the art to select the lecithin product of Losch or Umeda, with a minimum amount of oil and sugar, in it in order to obtain a product with fewer calories from fat and sugar.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kataoka (6,749,881) in view of Pardums (3,661,946).

Kataoka discloses a packaged emulsified beverage containing lecithin (see table 5). The claims appear to differ from Kataoka in the use of the particular lecithin of claim 7. It would have been obvious to one of ordinary skill in the art to select the lecithin product of Pardum for use in the product of Katoaka because the lecithin of Pardum was treated to optimize the required emulsifying power of lecithin.

Claims 8- 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pardums (3,661,946).

Pardums discloses phosphatide extraction with 90% ethanol. In example 3, soy lecithin is combined with alcohol at 50C, cooled to 20 and stirred. After allowing the mixture to stand overnight, the layers of extract

and residue were separated and analyzed. Claim 8 appears to differ from Pardums in the recitation of treating the residue of alcohol extraction more than once. It is very well known in the art to utilize multiple extractions to enhance the purity of extracted ingredients. It would have been obvious at the time of applicants' invention to extract lecithin with alcohol more once in order to further purify the lecithin product. It is appreciated that the concentration of alcohol in the solvent is not the same as it is in Pardums but no unobvious or unexpected result is seen from this particular ratio. It is also appreciated that a high shear mixer is not mentioned but no unobvious or unexpected results are seen from the selection of a particular type of mixer. Finally, it is appreciated that a centrifuge is not mentioned but a centrifuge would have been an obvious way to speed up the separation of the residue from the extract in Pardums.

Claims 16 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 16 and 21 include an optional step and it is unclear if this step is to be included or excluded from the process. An amendment to the claims canceling "optionally" would overcome the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 2-24-06
PRIMARY EXAMINER 1761